

**203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-15555-2018

Reserved on :- **13.04.2023**

Date of Pronouncement:- **26.04.2023**

Rita

...Petitioner

vs.

Pawan Kumar Goel

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Narayan Prasad Gupta, Advocate for the petitioner.

Mr. Ravi Dutt, Advocate for the respondent.

HARKESH MANUJA, J.

1. By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioner has prayed for quashing of impugned order dated 20.03.2018 passed by Judicial Magistrate First Class Kaithal in Case No. 262/17 u/s 420, 467, 465, 468, 471, 506 IPC dated 11.08.2014.

2. Brief facts about the case are that a complaint dated 11.08.2014, under Sections 420, 467, 465, 468, 471, 506 was filed in the court of Judicial Magistrate First Class, Kaithal by the respondent/complainant against the accused/petitioner. Charges were framed vide order dated 16.02.2018 and matter was adjourned for after charge evidence of complainant for 28.02.2018. On 06.03.2018, complainant closed his evidence and on 07.03.2018 statement of the petitioner/accused was recorded under section 313 Cr.P.C. after which case was adjourned to 13.03.2018 for defence evidence, if any and arguments. However, on 13.03.2018, an application under section 311

Cr.P.C. was moved by complainant, for recording the statement of complainant and his wife Smt. Anita Goel, which was allowed by learned Trial Court vide impugned order dated 20.03.2018.

3. Learned counsel for the petitioner submits that pre-charge evidence of the respondent/complainant were closed by his own statement on 03.02.2018 and after that statement of petitioner under section 313 Cr.P.C. was also recorded. In these circumstances, application filed u/s 311 Cr.P.C. by respondent was nothing but an attempt to fill the lacunas in his case. He further submits that the excuse given by the respondent/complainant that he and his wife could not be examined inadvertently does not hold much substance as on most dates, he remained present in the court. In support of his submissions, he places reliance upon:

i. **Swapan Kumar Chatterjee V/S Central Bureau of Investigation** reported as 2019(2) R.C.R. (Criminal) 162 S.C.

ii. **Harbinder Singh Versus Jaspal Singh** in CRM-M-17282-2014 decided on 06.01.2015

iii. **Niketan Dilip Paldhe Versus State of Maharashtra & Anr.** in Criminal Writ Petition 3369 of 2022 Bombay High Court

4. On the other hand, learned counsel for the respondent submits that respondent/complainant changed his advocate on 20.02.2016 during the preliminary evidence and while the respondent/complainant and his wife were examined during preliminary evidence, they could not be examined during after charge evidences and recording of their statement is very essential to prove his case. He further submits that section 311 of Cr.P.C. empowers the Court to summon material witness at any stage and there has been no willful

delay on the part of the complainant. He explains that complainant and his wife's statement could not be recorded only on account of an inadvertent mistake, and therefore, learned Trial Court has rightly allowed this application. In support of his submissions, he places reliance upon:

i. **Court on its own motion v. Amit Kumar Jain** , (P&H)(DB) :

Law Finder Doc Id # 196250 reported as 2009(3) R.C.R. (Criminal) 331

ii. **Rajendra Prasad v. Narcotic Cell, Delhi**, (S.C.) : Law Finder Doc Id # 33365

iii. **P. Sanjeeva Rao v. State of A.P.** (SC) : Law Finder Doc Id # 376698

5. I have heard learned counsel for both the parties and gone through the paper book of the case. In present case, the application appears to be bonafide as initially respondent / complainant changed his advocate and further during trial no delay can be attributed to him. Statement of respondent / complainant and his wife goes to the roots of the case and therefore, it is very much essential to record the same. In addition to that, it has been rightly observed by the learned Trial Court that no prejudice will be caused to the accused as he will get right to cross examine these persons.

6. The case of the respondent / complainant is also supported by the judgments cited by him. In Rajendra Prasad's case (supra), Hon'ble Apex Court observed that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. Relevant para is reproduced as below:

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be fore-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

In "**Hanuman Ram v. The State of Rajasthan , (SC) : Law Finder Doc Id # 149657**", Hon'ble Apex Court held that object underlying Section 311 of the Code is that that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. Relevant para thereof is reproduced as below:

“7. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or

trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wide the power the greater is the necessity for application of judicial mind."

7. On the other hand, authorities cited by the petitioner are distinguishable in the present facts. In **Swapan Kumar's** case (supra) there has been delay of 10 long years between the application under section 311 and the examination of witness. In **Harbinder Singh's** case (supra) evidence of complaint were closed by the order of the CJM and therefore, this Court held that application under section 311 Cr.P.C. is to circumvent the earlier order. In Niketan's case (supra), complainant filed application under section 311 of Cr.P.C. on earlier occasion as well which was allowed and it was the application filed on second time which was dismissed.

8. In view of the discussion held above, this petition is dismissed as no interference is warranted in the order dated 20.03.2018 passed by the learned Trial Court which primarily is going to further the cause of justice, enabling the parties to get their rights decided on merits. However, as the respondent/complainant has not pursuing his case diligently, cost of Rs. 25000/- is imposed upon him, which shall be paid to the petitioner.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

26.04.2023
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No